

ESTTA Tracking number: **ESTTA353337**

Filing date: **06/16/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Hard Candy Cases, LLC
Granted to Date of previous extension	06/16/2010
Address	375 Diablo Road Suite 200 Danville, CA 94526 UNITED STATES
Attorney information	Stuart J. West West & Associates, A PC 1255 Treat Blvd. 3rd Floor Walnut Creek, CA 94597 UNITED STATES trademark@westpatentlaw.com Phone:925.465.4603

Applicant Information

Application No	77700559	Publication date	02/16/2010
Opposition Filing Date	06/16/2010	Opposition Period Ends	06/16/2010
Applicant	Hard Candy, LLC 6100 Hollywood Blvd. 7th Floor Hollywood, FL 33024 UNITED STATES		

Goods/Services Affected by Opposition

Class 009. All goods and services in the class are opposed, namely: Consumer electronics, namely, apparatus for recording, transmission or reproduction of sound and images, audio cassette and CD players, speakers, audio headphones, audio recorders, audio speakers, audio tape recorders, calculators, cameras, cell phones, compact disc players, electric hair curling irons, electric hair straightening irons, electric irons, MP3 players, radios, portable handheld digital electronic devices for recording
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Grounds for Opposition

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Other	Lack of Bona Fide Intent to Use

Attachments	20100616-executed opposition-HARDC-41001.pdf (5 pages)(176745 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Stuart J. West/
Name	Stuart J. West
Date	06/16/2010

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In Re Application Serial No. : 77700559

For the Mark : Hard Candy

Filed : 27 March 2009

Published in the Trademark
Official Gazette on : 16 February 2010

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HardCandy Cases, LLC	:	
	:	Opposition No. _____
Opposer,	:	
	:	
v.	:	
	:	
Hard Candy, LLC	:	
	:	
Applicant.	:	
	:	
-----X	:	

NOTICE OF OPPOSITION

HardCandy Cases, LLC, a limited liability company, having a principal place of business at 375 Diablo Road, Suite 200 in Danville, California, 94526 (hereinafter "Opposer"), believes and alleges that it will be damaged by the registration of mark shown in the above-identified application, owned by Hard Candy, LLC, a limited liability company, having a principle place of business at 6100 Hollywood Blvd., 7th Floor, Hollywood, Florida , 33725 (hereinafter "Applicant"), and hereby opposes registration of the same.

As Grounds for Opposition, it is alleged that:

1. Opposer is actively engaged in the business of manufacturing, distributing and selling computing device, mobile telephone and personal digital assistant (PDA) cases, coverings, and shells under the marks "Hard Candy" and "Hard Candy Cases."

2. Opposer is the owner of the pending mark "HARD CANDY CASES (Serial No. 77/917,147)
3. Opposer has Standing to oppose Applicant's mark, as Opposer reasonably believes it will likely be damaged by registration of Applicant's mark.
4. Applicant is in the business of manufacturing, distributing and selling cosmetics.
5. Applicants present Trademark application seeks registration for the goods described as "Consumer electronics, namely, apparatus for recording, transmission or reproduction of sound and images, audio cassette and CD players, speakers, audio headphones, audio recorders, audio speakers, audio tape recorders, calculators, cameras, cell phones, compact disc players, electric hair curling irons, electric hair straightening irons, electric irons, MP3 players, radios, portable handheld digital electronic devices for recording."

1st Ground

(Lack of Bona Fide Intent to Use)

6. Since the year 1996, Applicant has filed more than 100, federal trademark applications that have subsequently been abandoned either expressly or for failure to file a statement of use.
7. On March 27, 2009, Applicant filed 11 intent-to-use applications in multiple classes of goods ranging from "MP3 Players" (Application Serial No. 77/700,559) and "electronic action toys" (Application Serial No. 77/700,563) to "cheese flavored snacks" (Application Serial No. 77/700,562) and "beauty beverages" (Application Serial No. 77,700,564), none of which have subsequently registered.
8. Applicant has exhibited a pattern and practice of filing multiple intent-to-use trademark applications across multiple classes of goods and subsequently abandoning the underlying applications for failure to file statements of use.

9. On information and belief, Opposer reasonably believes that at the time of filing its intent-to-use application for registration on March 27, 2009, Applicant did not have a bone fide intent-to-use such mark in connection with at least some of the goods identified in its application.

2nd Ground

(Fraud Involving Oath in Application)

10. Each of the above-alleged paragraphs are expressly repeated and re-alleged.
11. On April 25, 2008, the pop artist Madonna released her 11th album on Compact Disk (CD) entitled “Hard Candy.”
12. The album “Hard Candy” instantly gained national and international popularity and fame.
13. Upon information and belief, Opposer asserts that applicant knew of and/or should have known of the existence of Madonna’s “Hard Candy” CD.
14. The appropriate international class for CDs is 009.
15. On March 27, 2009, Applicant filed the above-identified application seeking registration in international class 009.
16. At the time of filing, Applicant, through its chief executive officer, Jerome Falic, electronically executed a declaration stating in relevant part that “no other person, firm, corporation, or association, to the best of his knowledge and belief, has the right to use such mark in commerce . . .when applied to the goods of such other person, to cause confusion, or to cause mistake, or to deceive.”

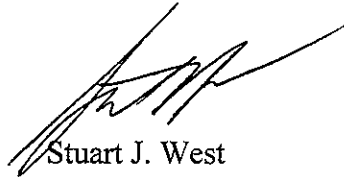
17. Upon information and belief, Opposer reasonably believes that at the time of filing its application in international class 009, it was aware of the existence of the identical mark in the identical international class of goods in use on Madonna's "Hard Candy" CD.

Prayer for Relief

For at least the foregoing reasons, Opposer respectfully requests that Applicant's application for registration of the mark "Hard Candy" be refused; or

In the alternative, Opposer respectfully requests that Opposer be allowed to further amend this Notice of Opposition.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stuart J. West", is written over the printed name.

Stuart J. West

Reg. No. 43,258

Attorney for HardCandy Cases, LLC

CERTIFICATE OF SERVICE

I, Dawn Callender, hereby certify that on June 16, 2010 a true and exact copy of foregoing Notice of Opposition was served by First Class Mail, postage prepaid to:

Registrant:

Hard Candy, LLC
6100 Hollywood Blvd. 7th Floor
Hollywood, FL 33024

Counsel for Registrant

Manuel Varcacel, Esq.
Greenberg Traurig, P.A.
1221 Brickell Ave, Suite 1840
Miami, FL 33131-3238


Dawn Callender